

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et al.,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**RESPONSE OF AMBAC ASSURANCE CORPORATION TO JOINDER OF ERS
BONDHOLDERS IN AMBAC ASSURANCE CORPORATION'S MOTION FOR RULE
2004 DISCOVERY CONCERNING COMMONWEALTH ASSETS [ECF 9022] AND
COMMONWEALTH CASH RESTRICTION ANALYSIS [ECF 9023]**

Ambac Assurance Corporation ("Ambac"), by and through its undersigned counsel, respectfully submits this response to the *Joinder of ERS Bondholders in Ambac Assurance Corporation's Motion for Rule 2004 Discovery Concerning Commonwealth Assets [ECF 9022] and Commonwealth Cash Restriction Analysis [ECF 9023]* (the "Joinder") filed by the ERS Bondholders in the above-captioned proceeding.² In response to the Joinder, Ambac respectfully states as follows:

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801)

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Joinder.

1. Ambac filed its Motion for Rule 2004 Discovery Concerning Commonwealth Assets (ECF No. 9022) and Commonwealth Cash Restriction Analysis (ECF No. 9023) (“Rule 2004 Motions”) on October 28, 2019. The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF,” and together with the Oversight Board, the “Government Parties”) filed a motion to strike Ambac’s Rule 2004 Motions on November 8, 2019 (ECF No. 9131), and after Ambac responded (ECF No. 9409) and the Government Parties replied (ECF No. 9531), the motion was fully briefed by December 10, 2019. The Government Parties’ motion to strike Ambac’s Rule 2004 Motions was denied by order of the Court on January 23, 2020 (ECF No. 10332).

2. After the Court’s ruling on the sanctions motion, five other creditors who had not previously joined Ambac’s motion submitted joinder motions.³ On February 6, 2020, this Court issued an order denying the request of the other creditors to participate in the meet and confer process on Ambac’s Rule 2004 Motions, noting that the Court’s order does not preclude “the Oversight Board, AAFAF, and Ambac from including [the Joinder Entities] from participating in devising a coordinated discovery plan and schedule.” Order at 3 (ECF No. 10727). The Court held the joinder motions pending to the extent that they sought to obtain copies of the discovery produced by the Government Parties or to participate in any depositions Ambac takes. *Id.*

3. To date, Ambac and the Government Parties voluntarily have permitted the Joinder Entities to participate in the meet-and-confer process and to obtain copies of all documents the

³ Joinders were filed by: Corporación de Servicios Integrales de Salud del Area de Barranquitas, Comerío, Corozal, Naranjito y Orocovis (“Corporación de Servicios Intergrales”) (ECF No. 9526); Assured Guaranty Corp. and Assured Guaranty Municipal Corp. (together, “Assured”), and National Public Finance Corporation (“National”) (ECF No. 10593); Official Committee of Unsecured Creditors (“UCC”) (ECF No. 10425); Salud Integral en la Montana (“SIM”) (ECF No. 10401); Financial Guarantee Insurance Company (“FGIC”) (ECF No. 10605) (together, the “Joinder Entities”).

Government Parties have produced. Ambac informed the ERS Bondholders on May 25, 2020, that it was amenable to voluntarily extending the same treatment to the ERS Bondholders.

4. Ambac's position is that the ERS Bondholders' Joinder should be denied, at least to the same extent as the joinder motions filed by the other Joinder Entities were. In particular, the motion to join the meet-and-confer process should be denied, so as to avoid creating the misimpression that ERS Bondholders have greater or different rights in that process than the other Joinder Entities.

5. The ERS Bondholders' request to receive copies of documents produced and participate in depositions also can be denied as unripe. The Government Parties have voluntarily been providing to the Joinder Entities copies of the documents produced in response to Ambac's Rule 2004 Motions. In addition, at this time, no depositions have been noticed. Assuming the Government Parties are willing to produce copies of the documents to the ERS Bondholders, as they have done with the other Joinder Entities, there is no dispute ripe for judicial resolution because the ERS Bondholders can obtain copies of the discovery. ERS Bondholders also will have an opportunity to participate in meet-and-confers regarding appropriate protocols for any depositions that may be noticed in the future. Any disputes regarding deposition protocols could be raised with the Court in the event that the parties reach an impasse following a meet-and-confer process.

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Dated: June 19, 2020
San Juan, Puerto Rico

FERRAIUOLI LLC

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CERTIFICATE OF SERVICE

I hereby certify that on this same date a true and exact copy of this notice was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

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